

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0096

SENATE BILL NO. 14

Introduced by: The Committee on Taxation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding references to the
2 Internal Revenue Code and to repeal an obsolete reference to the Internal Revenue Code.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-4-9.1 be amended to read as follows:

5 10-4-9.1. Property owned by a public charity and used for charitable purposes is exempt
6 from taxation. A public charity is any organization or society which devotes its resources to the
7 relief of the poor, distressed, or underprivileged. A public charity ~~must~~ shall receive a majority
8 of its revenue from donations, public funds, membership fees, or program fees generated solely
9 to cover operating expenses; it ~~must~~ shall lessen a governmental burden by providing its
10 services to people who would otherwise use governmental services; it ~~must~~ shall offer its
11 services to people regardless of their ability to pay for such services; it ~~must~~ shall be nonprofit
12 and recognized as an exempt organization under section 501(c)(3) of the United States Internal
13 Revenue Code of 1954, as amended; and in effect on January 1, ~~1986~~ 2009; and it may not have
14 any of its assets available to any private interest.

15 Section 2. That § 10-4-9.2 be amended to read as follows:



1 10-4-9.2. Property owned by a benevolent organization and used exclusively for benevolent
2 purposes is exempt from taxation. A benevolent organization is any lodge, patriotic
3 organization, memorial association, educational association, cemetery association, or similar
4 association. A benevolent organization ~~must~~ shall be nonprofit and recognized as an exempt
5 organization under section 501(c)(3), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the
6 United States Internal Revenue Code ~~of 1986~~, as amended; and in effect on January 1, ~~1992~~
7 2009. However, if any such property consists of improved or unimproved property located
8 within a municipality not occupied or directly used in carrying out the primary objective of the
9 benevolent organization owning the same, such property shall be taxed the same as other
10 property of the same class is taxed. However, if any such property consists of agricultural land,
11 such property shall be taxed the same as other property of the same class is taxed. For the
12 purposes of this section, an educational association is a group of accredited elementary,
13 secondary or postsecondary schools. For the purposes of this section, a benevolent organization
14 also includes a congressionally chartered veterans organization which is nonprofit and
15 recognized as an exempt organization under section 501(c)(4) of the United States Internal
16 Revenue Code ~~of 1986~~, as amended; and in effect on January 1, ~~1992~~ 2009.

17 For purposes of this section, benevolent purpose means an activity that serves the poor,
18 distressed or underprivileged, promotes the physical or mental welfare of youths or
19 disadvantaged individuals, or relieves a government burden.

20 Section 3. That § 10-4-9.3 be amended to read as follows:

21 10-4-9.3. Property owned by any corporation, organization, or society and used primarily
22 for human health care and health care related purposes is exempt from taxation. Such
23 corporation, organization or society shall be nonprofit and recognized as an exempt organization
24 under section 501(c)(3) of the United States Internal Revenue Code, as amended; and in effect

1 on January 1, ~~2004~~ 2009, and none of its assets may be available to any private interest. The
2 property shall be a health care facility licensed pursuant to chapter 34-12, orphanage, mental
3 health center or adjustment training center regulated under chapter 27A-5, or camp. The facility
4 shall admit all persons for treatment consistent with the facility's ability to provide health care
5 services required by the patient until the facility is filled to its ordinary capacity and conform
6 to all applicable regulations of and permit inspections by the state as otherwise provided by law.

7 Section 4. That § 10-4-9.4 be amended to read as follows:

8 10-4-9.4. Any congregate housing facility owned by a corporation, organization, or society
9 is exempt from certain property taxes, if the facility provides certain health care services and is
10 recognized as an exempt nonprofit corporation, organization, or society under section 501(c)(3)
11 of the United States Internal Revenue Code, as ~~of~~ amended and in effect on January 1, ~~2004~~
12 2009, and if none of its assets are available to any private interest. A congregate housing facility
13 does provide health care services if the facility is an independent group-living environment
14 operated and owned by a health care facility licensed pursuant to chapter 34-12 which offers a
15 continuum of care, residential accommodations, and supporting services primarily for persons
16 at least sixty-two years of age or disabled as defined pursuant to chapter 10-6A. Supporting
17 services include the ability to provide health care and a food service that satisfies a balanced
18 nutrition program. As part of the statement required by § 10-4-19, the owner of the congregate
19 housing facility shall submit a statement to the county director of equalization listing the health
20 care services provided and method used to satisfy the balanced nutrition program.

21 In addition, no owner may apply for a property tax exemption for a congregate housing
22 facility constructed after July 1, 2004, unless the congregate housing facility:

- 23 (1) Consists of two or more individual housing units located within one structure; and
24 (2) Not more than twenty-five percent of the individual housing units exceed fifteen

1 hundred square feet.

2 Section 5. That § 10-4-39 be amended to read as follows:

3 10-4-39. Any facility operated as a multi-tenant business incubator and owned by an entity
4 recognized as an exempt nonprofit corporation pursuant to section 501(c)(3), 501(c)(4), or
5 501(c)(6) of the Internal Revenue Code as ~~of~~ amended and in effect on January 1, ~~2006~~ 2009,
6 is exempt from property taxation. A business incubator is any facility that supports the
7 development and operation of a number of small start-up businesses. Tenants of the facility may
8 share a number of support services and the tenants may receive technical assistance, business
9 planning, legal, financial, and marketing advice. If any portion of the facility is occupied by an
10 incubated business for more than five years, that portion of the facility shall be taxed as other
11 property of the same class is taxed.

12 Section 6. That subdivision (7) of § 10-6A-1 be amended to read as follows:

13 (7) "Income," the sum of adjusted gross income as defined in the United States Internal
14 Revenue Code ~~of 1954~~, as amended ~~to~~ and in effect on January 1, ~~2008~~ 2009, and
15 IRA disbursements, the amount of capital gains excluded from adjusted gross
16 income, alimony, support money, nontaxable strike benefits, cash public assistance
17 and relief, the gross amount of any pension or annuity, including Railroad Retirement
18 Act benefits and veterans disability pensions, all payments received under the federal
19 social security and state unemployment insurance laws, nontaxable interest, life
20 insurance proceeds that exceed twenty thousand dollars, any gift or inheritance that
21 exceeds five hundred dollars, proceeds from a court action, any sale of a personal
22 item that exceeds five hundred dollars, foster care income, and workers'
23 compensation;

24 Section 7. That subdivision (5) of § 10-6B-1 be amended to read as follows:

(5) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code of ~~1954~~, as amended; and in effect on January 1, ~~2007~~ 2009, and all nontaxable income, including ~~but not limited to~~ the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash, public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability pensions, all payments received under the federal social security and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers' compensation, and the gross amount of "loss of time" insurance, but not including gifts from nongovernmental sources, food stamps, or surplus foods or other relief in kind provided by a public agency less real estate taxes payable on the applicant's principal residence for the year in which application is made;

Section 8. That subdivision (6) of § 10-18A-1 be amended to read as follows:

(6) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code, as amended; and in effect on January 1, ~~2007~~, 2009 and all nontaxable income, including ~~but not limited to~~ the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability pensions, all payments received under the federal social security and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers' compensation, and the gross amount of loss of time insurance, but not including gifts from

nongovernmental sources, food stamps, or surplus foods, or other relief in kind provided by a public agency less real estate taxes payable on the applicant's principal residence for the year in which application is made. However, the reduction in the applicant's income for real estate taxes payable may not exceed four hundred dollars;

Section 9. That § 10-43-10.1 be amended to read as follows:

10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined in the Internal Revenue Code, as amended; and in effect on January 1, ~~2008~~ 2009, and reportable for federal income tax purposes for the taxable year, but subject to the adjustments as provided in §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 1997, net income shall be computed in the same manner and in the same amount as if that institution had continued to file its federal tax return without making the election and the financial institution shall continue to be treated as a separate corporation for the purposes of this chapter. If a financial institution is organized as a limited liability company, the limited liability company shall be treated as a separate corporation for the purpose of this chapter.

Section 10. That subdivision (5) of § 10-45A-1 be amended to read as follows:

(5) "Income," the sum of adjusted gross income as defined in the United States Internal Revenue Code, as amended; and in effect on January 1, ~~2007~~ 2009, and all nontaxable income, including but not limited to the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability pensions, all payments received under the federal social security and state unemployment insurance laws, nontaxable interest received from

1 the federal government or any of its instrumentalities, workers' compensation, and
2 the gross amount of loss of time insurance, but not including gifts from
3 nongovernmental sources, food stamps, or surplus foods, or other relief in kind
4 provided by a public agency, less real estate taxes payable or ten percent of rent paid
5 on the applicant's principal residence for the year in which application is made.

6 However, the reduction in the individual's income may not exceed four hundred
7 dollars;

8 Section 11. That § 35-4-11.9 be amended to read as follows:

9 35-4-11.9. The renewal fee for any on-sale license issued outside a municipality to a
10 nonprofit organization, recognized as an exempt organization under section 501(c)(7) or
11 501(c)(19) of the United States Internal Revenue Code of 1986, as amended; and in effect on
12 January 1, ~~1994~~ 2009, which will be in operation less than one hundred fifty days each year shall
13 be established by the county commission at a rate not to exceed the rate in the nearest
14 municipality.

15 Section 12. That § 35-4-14.3 be amended to read as follows:

16 35-4-14.3. Notwithstanding the provisions of §§ 35-4-11 and 35-4-19, any municipality may
17 issue a special events temporary on-sale license in addition to any other licenses held by the
18 special events license applicant, if the licensee is recognized as an exempt organization under
19 section 501(c)(19) of the United States Internal Revenue Code, as amended; and in effect on
20 January 1, ~~2002~~ 2009, and the licensee holds a license within the municipality pursuant to
21 subdivision 35-4-2(16). No public hearing is required for the issuance of a license pursuant to
22 this section if the individual applying for the license holds an alcoholic beverage license in the
23 municipality or holds an operating agreement for a municipal alcoholic beverage license. Any
24 license issued pursuant to this section may be issued for a period of time, not to exceed two

1 consecutive days, established by the municipal governing body.

2 Section 13. That § 10-43-93 be repealed.

3 ~~—10-43-93. The amendments to the Internal Revenue Code made pursuant to Public Law 107-~~
4 ~~147 (The Job Creation and Workers Assistance Act of 2002), which was signed into law March~~
5 ~~9, 2002, shall apply to each return made pursuant to chapter 10-43 whose original due date for~~
6 ~~filing is on or after January 1, 2002.~~